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7 *Attorneys for Complainant*

8 **BEFORE THE**  
9 **BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

11 In the Matter of the Statement of Issues  
Against:

12 **ANDREA MARIE ESTRADA**

13 Respondent.

Case No. **2013-110**

**STATEMENT OF ISSUES**

14 Complainant alleges:

15 **PARTIES**

16 1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Statement of Issues solely  
17 in her official capacity as the Executive Officer of the Board of Registered Nursing, Department  
18 of Consumer Affairs.

19 2. On or about August 30, 2011, the Board of Registered Nursing (Board) received an  
20 application for Licensure by Examination for a Registered Nurse License from Andrea Marie  
21 Estrada ("Respondent"). On or about August 23, 2011, Andrea Marie Estrada certified under  
22 penalty of perjury to the truthfulness of all statements, answers, and representations in the  
23 application. The Board denied the application on January 24, 2012.

24 **JURISDICTION AND STATUTORY PROVISIONS**

25 3. This Statement of Issues is brought before the Board under the authority of the  
26 following laws. All section references are to the Business and Professions Code ("Code") unless  
27 otherwise indicated.  
28

1           4.     Section 2736 provides, in pertinent part, that the Board may deny a license when it  
2 finds that the applicant has committed any acts constituting grounds for denial of licensure under  
3 section 480 of that Code.

4           5.     Section 480 of the Code states, in pertinent part:

5                 “(a) A board may deny a license regulated by this code on the grounds  
6 that the applicant has one of the following:

7                 (1) Been convicted of a crime. A conviction within the meaning of this  
8 section means a plea or verdict of guilty or a conviction following a plea of nolo  
9 contendere. Any action that a board is permitted to take following the establishment  
10 of a conviction may be taken when the time for appeal has elapsed, or the judgment  
11 of conviction has been affirmed on appeal, or when an order granting probation is  
12 made suspending the imposition of sentence, irrespective of a subsequent order under  
13 the provisions of Section 1203.4 of the Penal Code.

14                 ...  
15                 (3) (A) Done any act that if done by a licentiate of the business or  
16 profession in question, would be grounds for suspension or revocation of license.

17                 (B) The board may deny a license pursuant to this subdivision only  
18 if the crime or act is substantially related to the qualifications, functions, or duties of  
19 the business or profession for which application is made.”

20           6.     Section 490 states, in pertinent part:

21                 “(a) In addition to any other action that a board is permitted to take  
22 against a licensee, a board may suspend or revoke a license on the ground that the  
23 licensee has been convicted of a crime, if the crime is substantially related to the  
24 qualifications, functions, or duties of the business or profession for which the license  
25 was issued.

26                 (b) Notwithstanding any other provision of law, a board may exercise  
27 any authority to discipline a licensee for conviction of a crime that is independent of  
28 the authority granted under subdivision (a) only if the crime is substantially related to  
the qualifications, functions, or duties of the business or profession for which the  
licensee's license was issued.

              (c) A conviction within the meaning of this section means a plea or  
verdict of guilty or a conviction following a plea of nolo contendere. Any action that  
a board is permitted to take following the establishment of a conviction may be taken  
when the time for appeal has elapsed, or the judgment of conviction has been  
affirmed on appeal, or when an order granting probation is made suspending the  
imposition of sentence, irrespective of a subsequent order under the provisions of  
Section 1203.4 of the Penal Code.”

          7.     Section 493 of the Code states:

              Notwithstanding any other provision of law, in a proceeding conducted  
by a board within the department pursuant to law to deny an application for a license  
or to suspend or revoke a license or otherwise take disciplinary action against a

1 person who holds a license, upon the ground that the applicant or the licensee has  
2 been convicted of a crime substantially related to the qualifications, functions, and  
3 duties of the licensee in question, the record of conviction of the crime shall be  
4 conclusive evidence of the fact that the conviction occurred, but only of that fact, and  
5 the board may inquire into the circumstances surrounding the commission of the  
6 crime in order to fix the degree of discipline or to determine if the conviction is  
7 substantially related to the qualifications, functions, and duties of the licensee in  
8 question.

9 As used in this section, 'license' includes 'certificate,' 'permit,'  
10 'authority,' and 'registration.'"

11 8. Section 2761 states, in pertinent part:

12 "The board may take disciplinary action against a certified or licensed  
13 nurse or deny an application for a certificate or license for any of the following:

14 (a) Unprofessional conduct, which includes, but is not limited to, the  
15 following:

16 ...

17 (f) Conviction of a felony or of any offense substantially related to the  
18 qualifications, functions, and duties of a registered nurse, in which event the record of  
19 the conviction shall be conclusive evidence thereof."

20 9. Section 2762 states, in pertinent part:

21 "In addition to other acts constituting unprofessional conduct within the  
22 meaning of this chapter it is unprofessional conduct for a person licensed under this  
23 chapter to do any of the following:

24 ...

25 (b) Use any controlled substance as defined in Division 10  
26 (commencing with Section 11000) of the Health and Safety Code, or any dangerous  
27 drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an  
28 extent or in a manner dangerous or injurious to himself or herself, any other person,  
or the public or to the extent that such use impairs his or her ability to conduct with  
safety to the public the practice authorized by his or her license.

(c) Be convicted of a criminal offense involving the prescription,  
consumption, or self-administration of any of the substances described in  
subdivisions (a) and (b) of this section, or the possession of, or falsification of a  
record pertaining to, the substances described in subdivision (a) of this section, in  
which event the record of the conviction is conclusive evidence thereof."

### REGULATORY PROVISIONS

10. California Code of Regulations, title 16, section 1444 states, in pertinent part:

"A conviction or act shall be considered to be substantially related to the qualifications,  
functions or duties of a registered nurse if to a substantial degree it evidences the present or

1 potential unfitness of a registered nurse to practice in a manner consistent with the public health,  
2 safety, or welfare.”

3 **FIRST CAUSE FOR DENIAL OF APPLICATION**

4 **(Conviction of a Crime)**

5 11. Respondent's application is subject to denial under section 480, subdivision (a)(1) and  
6 section 2761, subdivision (f) of the Code in that Respondent was convicted of a substantially  
7 related crime. On or about November 9, 2009, after pleading nolo contendere, Respondent was  
8 convicted of one misdemeanor count of violating Vehicle Code section 23152, subdivision (b)  
9 [driving while having 0.08% and more, by weight, of alcohol in her blood] in the criminal  
10 proceeding entitled *The People of the State of California v. Andrea Marie Estrada* (Super. Ct. Los  
11 Angeles County, 2009, No. 9RI04300). The Court placed Respondent on 36 months probation,  
12 with terms and conditions. The circumstances surrounding the conviction are that on or about  
13 August 17, 2009, Respondent drove a vehicle while having 0.08% and more, by weight of alcohol  
14 in her blood and hit a stop sign. While speaking to Respondent, the California Highway Patrol  
15 Officer detected an odor of an alcoholic beverage emitting from her breath. She was observed to  
16 have red watery eyes and quiet speech. When asked if she had been drinking, Respondent  
17 indicated that she had “4 or 5 beers and 2 shots of Patron.” During the booking procedure,  
18 Respondent submitted to a blood test that resulted in a Blood Alcohol Content level of 0.19%.

19 **SECOND CAUSE FOR DENIAL OF APPLICATION**

20 **(Dangerous Use of Alcohol)**

21 12. Respondent's application is subject to denial under section 2761, subdivision (a) of  
22 the Code, as defined in section 2762, subdivision (b) of the Code in that on or about August 17,  
23 2009, Respondent used alcoholic beverages to an extent or in a manner dangerous or injurious to  
24 himself, another person, or the public. The dangerous use of alcohol is described in more  
25 particularity in paragraph 11 above, inclusive and hereby incorporated by reference.

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1 section 2762, subdivision (c) of the Code. The conviction is described in more particularity in  
2 paragraph 11 above, inclusive and hereby incorporated by reference.

3 **FIFTH CAUSE FOR DENIAL OF APPLICATION**

4 **(Violations of the Nursing Practice Act)**

5 15. Respondent's application is subject to denial under section 2761, subdivision (d) of  
6 the Code in that Respondent committed violations of the Nursing Practice Act. The violations are  
7 described in more particularity in paragraph 11 through paragraph 14, subdivisions (a) through (c)  
8 above, inclusive and hereby incorporated by reference.

9 **PRAYER**

10 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
11 and that following the hearing, the Board issue a decision:

12 1. Denying the application for Licensure by Examination for a Registered Nurse License  
13 from Andrea Marie Estrada;

14 2. Taking such other and further action as deemed necessary and proper.

15 DATED: August 9, 2012

*Louise R. Bailey*  
LOUISE R. BAILEY, M.ED., RN  
Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
Complainant

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